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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

INNOVATION LAW LAB, *et al.*,

CASE NO.: 3:19-CV-00807-RS

Plaintiffs,

**PARTIES' JOINT MOTION TO
TEMPORARILY HOLD ORDER TO
SHOW CAUSE IN ABEYANCE**

V

ALEJANDRO MAYORKAS, *et al.*

Defendants.

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1 Plaintiffs Innovation Law Lab, *et al.*, and Defendants Alejandro Mayorkas, *et al.*,
 2 respectfully request that the Court temporarily hold in abeyance the Order to Show Cause issued by
 3 this Court on August 6, 2021. *See* ECF #131. Doing so will give the parties time to attempt to
 4 resolve any outstanding issues presented by the case without the need for additional litigation.

5 The Order to Show Cause directed plaintiffs to respond, by August 16, 2021, as to why the
 6 instant case should not be dismissed as moot. The parties are currently in negotiations concerning
 7 certain outstanding issues—specifically, the current situation of seven of the individual plaintiffs—to
 8 see if they can be resolved without further litigation. Resolution of these outstanding issues would
 9 obviate the need for further litigation, including litigation concerning the question of mootness. An
 10 order holding the Order to Show Cause in abeyance is therefore warranted.

12 **Background**

13 This action was commenced on February 14, 2019, to challenge the legality of the
 14 Defendants' then-recently-adopted policy, known as the "Migrant Protection Protocols" (MPP),
 15 under which certain individuals arriving the United States were returned to Mexico during the
 16 pendency of their removal proceedings. *See* ECF #1. This Court preliminarily enjoined the policy on
 17 April 8, 2019, as a violation of the Immigration and Nationality Act and the Administrative
 18 Procedure Act, *see* ECF #73—a decision that was affirmed by the Ninth Circuit on February 28,
 19 2020, *see Innovation Law Lab v. Wolf*, 951 F.3d 1073 (9th Cir. 2020). The injunction barred the
 20 government from continuing to place people into MPP and ordered that it bring back to the United
 21 States the eleven individual plaintiffs who brought the lawsuit and allow them to pursue their asylum
 22 applications from within the United States.¹ ECF #73 at 27.

23
 24 This Court's preliminary injunction was stayed, first by a Ninth Circuit motions panel on
 25 May 7, 2019, *see Innovation Law Lab v. McAleenan*, 924 F.3d 503 (9th Cir. 2019), and subsequently

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¹ The lawsuit was also brought by 6 organizational plaintiffs

1 by the Supreme Court pending its review of the Ninth Circuit's decision affirming the preliminary
 2 injunction, *see Wolf v. Innovation Law. Lab*, 140 S. Ct. 1564 (2020).). Thus, the 11 individual
 3 plaintiffs in the lawsuit remained in Mexico pursuant to MPP, notwithstanding the injunction.

4 On June 1, 2021, the Biden administration rescinded MPP, *see Petitioners' Suggestion of*
 5 *Mootness and Motion to Vacate the Judgment of the Court of Appeals*, at Appx., *Mayorkas v.*
 6 *Innovation Law Lab*, No. 19-1212 (U.S. June 1, 2021), and on June 21, 2021, the Supreme Court
 7 vacated the judgment and remanded to the Ninth Circuit with instructions to direct the District Court
 8 to vacate as moot the April 8, 2019 order granting a preliminary injunction, *see Mayorkas v.*
 9 *Innovation Law Lab*, No. 19-1212, 2021 WL 2520313, at *1 (U.S. June 21, 2021) ("The judgment is
 10 vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit with
 11 instructions to direct the District Court to vacate as moot the April 8, 2019 order granting a
 12 preliminary injunction. *See United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950)."). Pursuant to
 13 that order, the Ninth Circuit remanded the case back to this Court on August 6, 2021, *see Order*,
 14 *Innovation Law Lab v. Mayorkas*, No. 19-15716 (9th Cir. Aug. 6, 2021), ECF #130 and this Court
 15 vacated its preliminary injunction that same day, *see ECF #131*. The Court also issued an Order to
 16 Show Cause to the plaintiffs directing a response by August 16, 2021, as to why the case as a whole
 17 should not be dismissed as moot. ECF #131

20 Current Situation/ Outstanding Issues

21 Plaintiffs have communicated to Defendants that they believe seven of the individual
 22 plaintiffs in this lawsuit remain impacted by MPP.² Two are in ongoing removal proceedings in this
 23 country, seeking review before the BIA of removal orders they received after being placed in MPP;
 24 three are presently outside the country pursuant to removal orders they received after being placed in
 25 MPP; and two are outside the country after having withdrawn their applications for admission while
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28 ² Of the remaining four plaintiffs, three were granted asylum and one is deceased.

1 under MPP. The parties are currently conferring about whether these individual plaintiffs' situations
2 can be resolved without the need for further litigation. Such resolution would obviate the need for
3 additional litigation, including litigation concerning the question of mootness that this Court has
4 asked Plaintiffs to brief in the Order to Show Cause. However, additional time is needed to allow the
5 parties to engage in these negotiations.

6 WHEREFORE, the parties respectfully ask this Court to temporarily hold the order to Show
7 Cause in abeyance and to direct the parties to file a status report with the Court on August 30, 2021.
8 In their report the parties shall update the Court about the status of their negotiations to resolve any
9 outstanding issues concerning the seven individual plaintiffs and how much additional time they
10 anticipate is needed to reach a resolution.

12 Dated: August 11, 2021

13 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2021, I electronically filed the foregoing with the Clerk of Court by using the District Court CM/ECF system. A true and correct copy of this motion has been served via the Court's CM/ECF system on all counsel of record.

/s/ Judy Rabinovitz
Judy Rabinovitz